

OFFICE OF LEGAL AFFAIRS

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***Valdivia v. Schwarzenegger*****California Department of Corrections and Rehabilitation
Valdivia Monitoring Report- Office of Court Compliance****Santa Rita County Jail
2009- Third Quarter**

The Office of Court Compliance (OCC) submits this report on the Third Quarter 2009 monitoring tour of the Santa Rita County Jail, which occurred on July 21-22, 2009. The OCC reviewed parole revocation documents, observed parole revocation proceedings and interviewed staff from the Board of Parole Hearings (BPH), the Division of Adult Parole Operations (DAPO) and the California Parole Advocacy Program (CalPAP). The purpose of the tour was to evaluate CDCR's compliance with the requirements of the *Valdivia* Permanent Injunction, the *Valdivia* Remedial Plan, and current departmental policy and procedures governing parole revocation. The OCC representatives were Russa Boyd, Deputy Commissioner; Jesus Bautista, Parole Agent II; Wayne Flores, Parole Agent II; and Tracy Master, Parole Service Associate.

In preparation for the tour, the OCC reviewed 75 revocation packets provided to CalPAP, thereby enabling a review of the quality and completeness of documents given to the parolee and his/her attorney. Timeliness statistics from those cases can be found in Exhibit 1-A. A summary of the compliance issues identified from the packets is found in Exhibit 1-B. During the tour the OCC observed service of two Notice of Rights and Charges, observed six Probable Cause Hearings, and observed four Revocation Hearings. Staff interviewed included two Unit Supervisors (US), one US (A), 1 Assistant Unit Supervisor (AUS) and one FUNA, all from the San Jose Parole Coleman Avenue complex. The OCC monitors also interviewed staff at SRCJ including the Supervising Notice Agent, two DRUNAs, the DRU's Office Services Manager and the BPH Associate Chief Deputy Commissioner.

This report identifies deficiencies that require corrective action(s) and a Corrective Action Plan (CAP) is attached to the electronic version of this report as a Word document and is available upon request through the OCC. The OCC will allow each applicable division to develop the corrective action they deem most appropriate for remedying the compliance deficiencies. However, the OCC is always available to provide input or suggestions to the affected divisions in order to develop efficient corrective action and any necessary policy changes. The OCC is also available to assist in investigating the underlying causes that contribute to the compliance issues identified herein. Each division shall utilize this report to complete the attached CAP by documenting their proposed/implemented corrective action and return the completed CAP to the OCC within 30 days.

1) Probable Cause Determination (PCD)

a) Timeliness

Two of the 75 revocation packets reviewed prior to the tour were either not signed or dated by the US, or was dated prior to the arrest/hold date; therefore an assessment regarding the PCD could not be made. *Exhibit 1-B*. A timely PCD was completed in 70/73 (96%) cases reviewed. *Exhibit 1-A*. These statistics demonstrate DAPO's diligent efforts to meet the tight PCD timeline.

The following chart reflects investigation into the underlying causes for the three late PCDs:

Parolee Name CDC #	Parole Region II & Unit	Days Late	Cause for late PCD
Anderson, F46490	Oakland 1	5	Hold date 5/30/09, PCD NLT date 6/01/09, PCD occurred 6/08/09. No good cause for untimeliness. CLETS printout revealed that on 5/30/09 the arresting agency made contact with ID Warrants, who authorized the hold per PC 3056. It does not appear the information regarding the hold placed by ID Warrants was relayed to the AOR. The late PCD can be attributed to miscommunication between ID Warrants and the AOR.
Bayard, V80489	San Jose 6	4	Hold date 5/04/09, PCD NLT date 5/06/09, PCD occurred 5/12/09 No good cause for untimeliness. Documents available for review failed to provide any information to determine reason for the late PCD.
Hatcher, V08206	Oakland 1	1	Hold date 5/26/09, PCD NLT date 5/28/09, PCD occurred 5/30/09. No good cause for untimeliness. Berkley Police arrest report indicated parolee was arrested on 5/26/09. The report further indicated the arresting officer made contact with the Berkley Parole Officer of the Day, who placed a PC 3056 hold. Mitigating circumstances may be that the PC 3056 was obtained through the Berkley Parole Unit and not the parolee's assigned office (Oakland). For reason(s) unknown the Agent of Record either did not receive notice of the arrest and subsequent PC 3056 hold or was late in submitting his charge report.

The RSTS "Close Case Summary" report revealed an outstanding 98% of PCDs were timely from June 15-July 15, 2009 for all cases processed at SRCJ.

For the same reporting period, the RSTS "Close Case Summary" for the San Jose Parole Coleman complex units showed the following timeliness percentages for the PCD:

San Jose 1	98%	San Jose 3	100%	San Jose 5	100%
San Jose 6	96%	San Jose 7	100%		

2) Notice of Rights/Charges

a) Timelines

Only one of the 75 cases reviewed prior to the tour was missing both the BPH 1073 and BPH 1100 and timeliness therefore could not be determined. *Exhibit 1-B*. 63/74 cases analyzed were timely and the late cases averaged 1.5 days late. *Exhibit 1-A*. As the table below shows, seven of the notices which appear late were late for good cause.

In addition to the pre-tour cases reviewed, two notices were observed during the tour and both were timely. **Therefore, a total of 72/76 cases (95%) met Valdivia timelines at this step or there was good cause for delay.**

A summary of each case where notice was late, including good cause/no good cause analysis for untimeliness, is as follows:

Parolee Name CDC #	Parole Unit	# Days Late	Cause for Late notice
Anderson, F46490	Oakland 1	4	See above PCD late chart- the PCD was 5 days late and subsequently 4 days late at the NOR step. Although the NOR was late in this case it was of no fault of the notice agent. Not good cause.
Burke, V58209	San Leandro	1	Revealed two consecutive days of attempts to serve timely but unsuccessful due to out to court status. Good cause.
Cordova, G34852	Hayward	1	Revealed one timely attempt at notice but unsuccessful due to out to court status. Good cause for delay.
Hatcher, V08206	Oakland 1	1	See above PCD late chart, the PCD did not occur until after the NOR timeline had expired. This was not the fault of the notice agent. No good cause.

Manzo, V15836	Oakland 3	2	Revealed one unsuccessful timely attempt, due to out to court status. The following week day was Memorial Day, however, RSTS is absent of reason for failed attempt on next business day where notice could have been completed. Not good cause.
Mayfield, K09395	Berkley 1	2	Revealed three consecutive business days of unsuccessful attempts due to out to court status. Good cause.
Oliver, V53030	Oakland 3	1	Revealed two consecutive days of unsuccessful attempts due to out to court status. Good cause.
Prout, G34968	San Jose 5	1	RSTS is absent of reason for late notice. Not good cause.
Ruano, V86028	San Leandro	1	Revealed one unsuccessful attempt due to out to court status. Good cause.
Savage, P05835	East Bay	1	Revealed one unsuccessful attempt due to out to court status. Good cause.
Smith, V98856	Oakland 3	1	Revealed two consecutive days of unsuccessful attempts due to out to court status. Good cause.

CalPAP reports for their Dublin office show 89.24% of notices were timely in March, 88.58% were timely in April, and 87.44% were timely in May. However, these statistics do not take good cause reasons for untimeliness into account.

As stated in prior SMT reports, parolees out to court for new criminal charges or probation violations interferes with the ability to serve notice, which in turn results in notices occurring beyond the third business day. A majority of the notices that occurred more than three business days from the hold, as summarized in the table above, were due to court appearances. This reality is beyond the control of the notice agents.

The SNA reported that SRCJ parolees are transported to court very early in the morning and often do not return until late in the evening and that attempting to conduct notices at the jail transport staging area or at the courthouse is ill-advised because it compromises the safety and security of jail staff and parolees alike. The SNA, in an effort to alleviate the problem, has adjusted his work hours to wait for out to court parolees to return to the jail so he can conduct the notices himself, when possible. .

The notice agents stated they do not have a problem accessing parolees physically located at the jail(s), but concurred that most late serves can be attributed to out to court status. The notice agents use the RSTS drop-down menu to document the underlying reason a notice cannot be completed. Because the DRUNAs are located at the jail, they conduct random checks throughout the day to see if the parolee has returned from court to complete the serve or they attempt to complete the notice the following day(s) until successful.

b) Observations

The monitors had an opportunity to observe a FUNA and the DRUNAs and both utilized similar methods in preparing for and conducting notices. The monitors observed one DRUNA conduct two notices inside the SRCJ security housing unit. The following is a summary of the notices:

Popoff (F09604): The notice was conducted at the cell door through a food port opening because of the location. This did not adversely affect the quality of the notice and was provided greater confidentiality, although Defendants dispute that confidentiality is required by the Injunction. The only error came during presentation of the BPH 1100. The DRUNA emphasized to the monitors he always reads the 1100 verbatim to parolees. However, as he read aloud it was evident that he was paraphrasing the document as he underlined points of importance. As he read aloud he stated in error that he had the right to have his revocation hearing within 15 miles of the alleged violation. This error was caught by the DAPO representative who brought to the DRUNA's attention that it is 50 miles and not 15 miles. The DRUNA quickly made the correction to the parolee.

Baslee, C29483: This notice was conducted in a security housing unit dayroom with no other inmates present. The 1073 indicated the parolee needed glasses- the parolee confirmed that he could not read without glasses and did not have any. The magnifier was made available but due to the waist restraints he was unable to maneuver it around in order to read Section II of the 1073 form (waist restraints were used because it was a security unit). As a result the DRUNA read the form out loud to the parolee. The parolee acknowledged he understood and gave a brief explanation of what was read to him. The parolee was allowed to free one hand in order to sign revocation documents. The parolee was undergoing detoxification, which is why Sheriff Deputies declined to uncuff him throughout the entire notice.

c) Qualitative review for notice documents

Taking a global view of the notice documents for the packets reviewed prior to the tour, one or more deficiency was found in 78% of cases. The individual deficiencies can be found in the Santa Rita Compliance Summary. ***Exhibit 1-D***. A summary of the pertinent compliance deficiencies at this step are noted below:

- In 21/75 (28%), the CDCR 1502B failed to meet the requirements to provide a short statement of fact for each charge alleged against the parolee. ***Exhibits 1-B and 2***. This is a significant improvement since the second quarter 2008 SMT, where 42% of the 1502-Bs were deficient in this respect. Of the 21 deficient 1502-Bs, 13 factual summaries were deficient for absconding charges for which the agent merely noted the parolee was arrested on a PAL warrant and/or BPH had suspended parole.

The US and AUS agreed that the 1502-B should provide a short factual summary of each alleged charge to give the parolee an opportunity to assist their attorney to mount a formidable defense in advance of the PCH. One AUS indicated she requires that sufficient information in the way of a factual summary is included for each case she reviews and does not hesitate to send it back to the AOR asking for more details. The US had cases pending review on her desk and showed an example of a 1502-B charging absconding that she will send back to the AOR for more information (all that was included was a statement that the parolee was arrested on a PAL warrant). She added that her current assignment as acting PA III, along with her AUS workload, has been overwhelming at times and conceded that on occasion cases might get past her.

- 11/16 (69%) packets did not have the source document attached to the BPH 1073 although Section I identified a disability, needed accommodation, or reading/GPL level below 4.0. **Exhibit 1-B.** There has been no improvement concerning this deficiency over the last year, as the 2008 SMT for Santa Rita DRU reported the deficiency in 53% of cases. The OCC sees this issue at all locations throughout the state and will conduct an inquiry to determine where the breakdown in communication and information sharing is. Factors contributing to this issue likely span across divisions.
- There were eight cases in which there was a problem with proper completion of Sections II and/or III of the BPH 1073 (i.e. contradicting boxes checked, no boxes checked to indicate whether the parolee required assistance, etc.). **Exhibits 1-B and 3.**
- One BPH 1100 was not completed correctly. The boxes were not marked to verify receipt of all notice documents. **Exhibits 1-B and 4.**

d) Charges added after notice

Thirty five cases reviewed prior to the tour were identified as having charges added after the parolee was noticed. The parole agent had, or should have had, enough information to include the additional charge(s) at the time the 1502-B was written for 16 of those cases (46%). **Exhibit 1-B.** Further investigation revealed that information to support the additional charges in a majority of deficient cases was contained in the field file at the time the 1502-B was authored. Examples of inappropriately added charges include positive anti-narcotic tests received days or months prior to the current arrest; alleged violations of special conditions; and alleged violations discovered through an arrest actually made by DAPO.

The chart below identifies the cases in which charges were added after the parolee was noticed and investigation revealed the additional charges should have been included on the 1502-B¹.

Parolee CDC #	Parole Violation Charge	Narrative Summary
Anderson (F46490) Oakland 1	<ol style="list-style-type: none"> 1. Use of cocaine 2. Burglary 3. Resisting arrest 4. False information to a PO 5. Use of cocaine 	The violation report noted the AOR received a second anti-narcotic test positive for cocaine on 6/8/09 the same day the CDC 1502-B was written; however, per information on the fax copy of the lab report, it appears the information was faxed to the unit on 6/5/09 and therefore the AOR should have included the charge at the time the 1502-B was created.
Baldwin (V58231) Richmond 2	<ol style="list-style-type: none"> 1. Absconding 2. Battery 	The alleged battery violation was from February 2007, in addition, the miscellaneous decision was submitted for the absconding violation at the same time. A review of the field file at the time the 1502-B was written should have revealed the unresolved battery violation and therefore should have been included on the Charge Report
Burke (V58209) San Leandro	<ol style="list-style-type: none"> 1. Assault with deadly wpn 2. Assault 3. Battery on spouse/child 4. Absconding 5. Prowling 6. False ID to P/O 	The added violations were a result of an incident that took place on 4/15/09. Per the violation report, the AOR attempted a home visit on the same day and met with the responding deputies. At this time the AOR should have requested a full detail account of the incident from the deputies. The parolee was arrested a month later on 5/24/09. All 3 charges related to the 4/15/09 incident should have been included on the 1502-B.
Cardenas (G07203) San Francisco 3	<ol style="list-style-type: none"> 1. Burglary 1st 2. Possession of deadly wpm 3. Possession of stolen property 4. Resisting arrest 5. Trespassing 6. False ID to peace officer 	The violation report indicates the parolee was arrested on 5/12/09, DAPO was notified of the arrest on 5/22/09 via CLETS, at which time they also received a faxed copy of the police report. AOR did not place a hold until 5/26/09. AOR was in receipt of the police report and therefore should have known of all charges at the time the 1502-B was authored.
Dunbar (D37199) San Jose 7	<ol style="list-style-type: none"> 1. Violation of SCOP – failure to charge GPS device 2. Absconding 	Information regarding the failure to charge the GPS device was included in the 1502-B but not listed as a charge.
Hoover (T65820) San Leandro	<ol style="list-style-type: none"> 1. Failure to test 2. Receiving stolen property 3. Access to ammunition 4. Access to a firearm 5. Poss. of burglary tools 6. Poss. of burglary tools 	Parolee was arrested by DAPO on 5/19/09 for charges listed on the 1502-B. The parolee and his home were searched on the same day as arrest and additional violations were discovered. The 2 additional charges should have been included on the 1502-B.

¹ Charges noted in bold print are those added after notice.

Johnson (F09065) East Bay	<ol style="list-style-type: none"> 1. Absconding 2. Failure to attend BPH drug treatment 	On 8/29/08 the parolee was ordered by BPH to attend a drug treatment program but instead absconded for 5 months. AOR should have been aware and included this additional violation at the time the 1502-B was generated.
Joiner (V26667) East Bay	<ol style="list-style-type: none"> 1. Violation of SCOP – Pornographic material 2. Possession of cocaine 3. Possession of drug paraphernalia 	Per the Oakland police report the arresting officer spoke to the AOR at the time of the contact with the parolee; therefore the AOR should have known about the officers finding what they suspected was cocaine residue and included the additional violation on the Charge Report.
Long (V85354) Oakland 3	<ol style="list-style-type: none"> 1. Use of heroin 2. Possession of drug paraphernalia 3. Failure to inform DAPO of arrest 	Per the violation report the AOR received the positive anti-narcotic test approximately one week prior to the parolee's arrest for the noted charges. A review of the field file would have revealed the unresolved violation and should have been included on the 1502-B.
Manzo (V15836) Oakland 3	<ol style="list-style-type: none"> 1. Change residence w/o informing DAPO 2. Possession of two FA 3. Possession of c/s for sale 4. Violation of SCOP 5. Unlawful sex w/minor u/18 	The 1502-B made several references to the Oakland police report. There is detailed information in the police report about the gang paraphernalia found during the arrest. The AOR should have included the additional violation on the Charge Report at the time it was written.
Mayfield (K09395) Berkeley 2	<ol style="list-style-type: none"> 1. Absconding 2. Possession of any other c/s 3. Violation SCOP ordered by BPH 	AOR was aware the parolee was to complete a program per 3/5/09 BPH hearing. The 1502-B noted the parolee left the program and failed to return; additionally, this was the second program the parolee failed since the initial order. The AOR should have included the additional violation at the time the 1502-B was authored.
McGovert (G06511) San Jose 6	<ol style="list-style-type: none"> 1. Illicit use of Amph/Meth 2. Use of cocaine 3. Possession of drug paraphernalia 4. Access to firearm 5. Access to ammunition 	Charge 1 was a positive drug test from a month prior to the arrest. A review of the field file should have reveals the outstanding violation. Charge 5 was related to a compliance search and a DAPO arrest. Both charges were known by DAPO at the time of arrest and should have been included on the 1502-B.
Michel (V57206) San Leandro	<ol style="list-style-type: none"> 1. Illicit use of meth. 2. Possession of meth. 	Hold was placed on 5/16/09. The added violation of use of meth was the result of a positive drug test returned on 5/5/09. A review of the field file would have revealed the additional violation and should have been included on the CDC 1502-B Charge Report.
Parker (V20742) San Jose	<ol style="list-style-type: none"> 1. VSCOP – failure to charge GPS 2. Failure to follow instructions 3. VSCOP – contact w/minors 	The AOR noted in the violation report that during questioning (same day as arrest), the parolee stated he traveled and had contact with minors. A review of the field file would have revealed the SCOP and should have been included on the 1502-B.

Payne (V39365) Vallejo	<ol style="list-style-type: none"> 1. Absconding 2. Failure to report an arrest 3. Possession of drug paraphernalia 	The parolee was arrested on 5/27/09 and the AOR stated in the violation report that on 12/14/08 he discovered the parolee had been cited and released on 11/15/08 for possession of C/S paraphernalia. Both added charges were known at the time the parolee was arrested and the 1502-B was created.
Prout (G34968) San Jose 5	<ol style="list-style-type: none"> 1. VSCOP – Failure to complete ICDTP 2. Absconding 3. Use of alcohol 4. Drunk in public 5. False ID to a PO 	The initial charge was written as a failure to follow instruction from P&CSD, however, because the AOR was aware of the SCOP and the penalty is greater then the initial charge, the 1502-B should have reflected the more specific charge for VSCOP – Failure to complete ICDTP.

3) Violation Report and Unit Supervisor Review

a) Timeliness

A timely US review of the Violation report was conducted in 75/75 revocation packets reviewed prior to the tour (100%). *Exhibit 1-A.*

b) Qualitative document review

- **“Priority” designation-** In 27/42 (64%) of the cases meeting criteria for priority designation, the CDC 1676 was not identified “Priority,” as required by DAPO memorandum #5-30 dated May 05, 2007. *Exhibits 1-B and 5.* The 2008 SRCJ SMT revealed 22/53 (42%) of cases reviewed met priority designation however were not identified as such on the violation report.

Priority designation was designed to ensure parole revocation cases posing the highest risk to public safety are processed expeditiously throughout the entire process. The OCC recognizes there is no violation of the Injunction or due process when revocation packets are not marked priority at the field units. However, failure to comply with this policy can have a significant impact later in the process when critical timelines associated with the probable cause and revocation hearings may be violated and charges dismissed as a result. Proper priority designation alerts Par Ads, DRU staff and Deputy Commissioners that a case should be looked at quickly for special attention when timeframes are nearing expiration.

- 11% of cases included arrests and convictions together on the CDCR 1521-B in a way that made it impossible to differentiate the two. *Exhibit 1-B.* Parole agents were trained to separate the two in 2008 but the direction has not been followed by all agents.

4) Parole Administrator Review

a) Timeliness

Sixty six of 74 reviewable cases were timely at this step (89%); the late cases averaging one day late. *Exhibit 1-C*. The late cases were sent from the following parole units: San Leandro – 3; Eastbay – 2; San Jose2 – 1; San Jose5 – 1; and Oakland 3 – 1. According to RSTS packet tracking, the late cases were mailed from the parole units on the final no later than date for a Par Ad review resulting in the Par Ads receiving the case after the NLT for their review had passed. Therefore, there is no good cause for the untimeliness, although it is in no way the fault of the Par Ads.

b) Par Ad meeting with parole unit supervisors

During the parole unit visit, we were notified the Par Ads were meeting with the Unit Supervisors regarding some DAPO Valdivia related issues; however, our request to observe the meeting was denied by the Par Ad. Any discussions or training regarding Valdivia issues has been of particular interest given the recent focus on the Los Angeles area and the need to document and report on progress in the way of corrective action. Allowing the monitors to attend would be a positive step to showing efforts toward compliance in Region II. Monitors did have an opportunity to speak with the Parole Administrators the following day and were given a brief synopsis of the Valdivia issues discussed during the meeting.

The Valdivia issues discussed during the Unit Supervisor/ Par Ad meeting were:

- A review of the *Comito* check list with emphasis on recognizing the witnesses that must be called for a revocation hearing.
- Reminder to unit supervisors to encourage parole agents to use remedial sanctions at the unit level.
- Determining eligibility and ineligibility for a remedial sanction placement or recommendation.

c) Positive working relationships

Both Par Ads expressed positive efforts have been made by all parties to create a smooth working relationship with the central idea of achieving timeliness and due process compliance. The Par Ads work with the jail to facilitate requests for mental health evaluations and secure treatment for parolees. They act as a liaison when a potential over-detention is brought to their attention, following-up the AOR and jail staff to ensure the situation is resolved. They reported an open line communication with the Dublin CalPAP staff attorney, field agents and BPH staff. Working with the CalPAP Dublin office, the Par Ads have implemented a practice to forward documentation missing from revocation packets directly to CalPAP once received. This extra effort helps to ensure

attorney packets are as complete as the BPH copy and that defense attorney are aware of missing or additional information at the earliest possible time.

5) Return to Custody Assessment (RTCA)

a) Timeliness

According to Exhibit 1-A, 74/75 RTCAs reviewed prior to the tour were timely (99%). The one late case, for parolee Anderson (F46490), occurred because the PCD was significantly late (the hold date was 5/30/09 and the PCD did not occur until 6/08/09). This caused a delay in case processing through the RTCA. The PCH for this case, however, was timely.

According to the RSTS "Closed Case Summary- Valdivia Timeliness Rules" report, RTCAs were timely for 96% of cases in May, 97% of cases in June, and 93% of cases in July.

b) Qualitative assessment

The monitors did not observe the completion of any RTCAs during the tour. However, the documents reviewed indicate that there are no significant issues concerning the RTCA component of the process. BPH staff at the DRU did not report any problems associated with RTCAs. There was only one case reviewed prior to the tour in which the DC did not utilize the drop-down box in RSTS to document the consideration of remedial sanctions. *Exhibit 1-B.*

c) Completion of Section IV of the 1073 following RTCA

There were three cases in which Section IV of the BPH 1073 was not completed prior to the attorney consultation line-up and PCH calendar. *Exhibits 1-B and 6.* BPH's DEC policy and procedures requires that DRU staff complete this function in order to identify accommodations that will be necessary for the hearings.

6) Appointment of counsel and effective communication with counsel

a) Timeliness

According to information captured in RSTS, DRU staff documented the date on which the revocation packets were made available to CalPAP in 69/75 cases reviewed prior to the tour. Of those, all attorney assignments were timely. *Exhibit 1-A.*

According to CalPAP statistics, appointment of counsel continues to be timely for a vast majority of cases at SRCJ. Data from the Dublin CalPAP office reveals the following timeliness statistics for the appointment of counsel at SRCJ:

Month	Cases Reviewed	Cases in compliance	Percent Timely
March 2009	710	692	97.46%
April 2009	797	773	96.99%

May 2009	690	662	95.94%
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b) Effective communication

According to CalPAP's data, the following chart reports the provision of disability and source document information to defense counsel:

Month	Total Cases	1073 Missing	Source Doc. Required	Source Doc. Missing
March 2009	728	5 (1%)	159	97 (61%)
April 2009	821	2 (<1%)	207	130 (63%)
May 2009	714	5 (1%)	152	96 (61%)

c) Attorney-client interviews

Plaintiffs' counsel, in their Q2 2009 monitoring report for SRCJ, continues to raise concerns over the practice of holding attorney-client interviews at tables in the *Valdivia* gymnasium. As Defendants continue to maintain, neither the Injunction nor due process require confidentiality. While it is true that parolees with certain disabilities may be impeded from effectively communicating with counsel due to the surrounding operations, Defendants will continue to arrange an interview location that will facilitate effective communication for that population. Defendants see no violation of the Injunction in the practice of holding interviews at their current location in the gymnasium.

Because the *Valdivia* gymnasium closes at 3:00 p.m., some late-afternoon interviews must occur in the housing units. According to CalPAP some units hold interviews in no-contact phone booths, which prohibit the attorney from passing paperwork to the parolee. In other housing units CalPAP reports attorneys cannot access their clients because, according to jail staff, there are not enough Deputies staffed to facilitate the interviews. Defendants have reviewed the contract between BPH and Alameda County will set meeting in September to discuss possible solutions to this problem and require the contract's provisions to be followed in a manner that facilitates attorney access to clients.

d) Provision of the CDCR 1654 to defense counsel

Thirty nine (52%) revocation packets provided to defense counsel did not contain the CDCR 1654, the State's witness list. *Exhibit 1-B*. The witness list must be included in the revocation packet in order to allow the parolee and counsel to know what witnesses will be called and to determine a defense strategy for the case. The monitors learned that past practice was for DRU staff to provide defense counsel the 1654 at the conclusion of the PCH when the parolee rejected the offer. The monitors brought this issue to the attention of the ACDC and DRU Office Services Manager (OSM) prior to the tour. The OSM instructed DRU staff to include the 1654 in the attorney and parolee revocation packets and by the time of the tour the problem had been remedied. The OSM has proven efficient her ability to

quickly address problems as they are identified. The monitors observed packets in the DRU that were complete with the 1654 prior to being provided to CalPAP.

7) Probable Cause Hearing (PCH)

a) Timeliness

All 75 of the cases reviewed prior to the tour proceeded to a PCH. Of those, 63 were timely (84%). *Exhibit 1-A*. An investigation into the late cases revealed the following:

- Parolees Abraham (G13625), Bayardo (V80489), Cruz (G29027), Dhaliwal (G44764), Rodriguez (V82096)- PCH occurred one day late. According to the RSTS case comments, the DRU was unable to schedule the hearing timely due to a shortage of DCs.
- Parolees Cordova (G34852), Shannon (T23250), Natividad (F09163), Le (V45847)- PCH occurred two days late. According to the RSTS case comments, the DRU was unable to schedule the hearing timely due to a shortage of DCs.
- Savage (P05835)- PCH NLT was 5/21/09. The initial PCH was scheduled to occur one date late on 5/22/09. According to the RSTS case comments, the DRU was unable to schedule the hearing timely due to a DC shortage. When the BPH attempted to hold the PCH on 5/22/09 the hearing was postponed because the assigned attorney had not interviewed the parolee. Although the hearing was postponed, the DC nonetheless made an entry in the "Basis for Conclusion" section of the BPH 1103-PCH documenting a finding of probable cause. *Exhibit 7*. If the hearing was postponed there should not have been a probable cause finding.
- Jackson (G11548)- the PCH was one business day late. The case processed timely through the RTCA step but was untimely at the PCH step. The information in RSTS does not indicate why the PCH was late.
- Lynch (K64667)- the PCH was four business days late. The case processed timely through the RTCA step but was untimely at the PCH step. The information in RSTS does not indicate why the PCH was late.

One of the six PCHs observed during the tour was late (Pearson, T85087) by one day. RSTS shows that the case processed timely through the RTCA, but was late at the PCH for undocumented reasons.

68/81 total cases reviewed for this tour were timely at the PCH step (84%).

CalPAP's statistics from the Dublin office reveal the following timeliness percentages:

Month	Cases Reviewed	Cases in compliance	Percent Timely
March 2009	610	602	98.69%
April 2009	630	618	98.10%
May 2009	647	502	77.59%

According to the OSM I and the ACDC, there was a shortage of DCs available to conduct hearings at SRCJ in May, June and part of July because a large number of retired annuitant DCs had run out of hours and could no longer work and because newly hired DCs were undergoing training at the DC Academy. Since that time the retired annuitants have returned with the new fiscal year, and an additional four DCs have been assigned to Region II from the DC academy. Looking at RSTS, the timeliness of PCHs has increased dramatically since July- 97% of PCHs were timely between August 1-20, after the DCs were all back at work.

b) Qualitative document review

The revocation packets reviewed prior to the tour revealed the following deficiencies:

- In 23/75 cases (31%) the DC did not adequately document the evidentiary basis for the probable cause finding on the BPH 1103-PCH. *Exhibits 1-B and 8*. A majority of the deficiencies surrounded the evidentiary summary for absconding charges.
- In 8/75 cases (11%) the DC did not complete Section V of the BPH 1073 in DEC. *Exhibits 1-B and 9*. The policy and procedures for DEC require that the DC complete Section V of the 1073 for every case, and the DCs were reminded of this during recent training sessions.
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c) Quality of hearings

The monitors observed two DCs conduct PCHs- one was a recent graduate from the DC Academy and the other was a veteran, retired annuitant DC. During the first several hearings the veteran DC sat in with the new DC to ensure she was comfortable with the hearing process and substantive issues. The veteran DC was available to answer questions and guide the new DC through her first few hearings. Thereafter, the new DC was allowed to conduct her own hearings and she appeared comfortable with the process and with her role as hearing officer. The DCs specifically reviewed the evidentiary basis for the charge(s) by reviewing the Violation Report and attached evidence (they both read the factual summaries on the CDC 1676 aloud), allowed the parolee to challenge probable cause, and verbalized the evidentiary basis for their probable cause findings. In addition, both gave the parolee and counsel a forum to negotiate a reasonable disposition. There were no deficiencies noted concerning the substantive aspects of the hearings.

A review of the BPH 1103s for the observed hearings shows that the DCs sufficiently documented the evidentiary basis for their probable cause findings for all charges with the exception of absconding. Both DCs wrote similar language for the basis for a PC finding, such as "Probable cause found on charge based on parolee's whereabouts unknown for a period of just over 30 days." *Exhibit 10*. Per direction from BPH Headquarters, such a statement is incomplete. The evidentiary statement would improve by including the method by which the parole agent attempted to contact the parolee to no avail, or what reporting instructions were in place and not adhered to. It is possible that a parolee be compliant with conditions of parole even if there whereabouts is unknown for a certain period of time. The facts that gave rise to a duty to report, or make oneself available, are the critical components for absconding.

d) ADA and provision of accommodations

The last monitoring report from Plaintiffs' counsel discusses two cases in which parolee disabilities were not accommodated at their PCH. That was not the case during this tour. Both DCs reviewed DEC and conducted thorough and interactive ADA reviewed by asking the parolees questions specific to various disabilities, mental health status, medications and education. The DCs also had the parolees read the ADA paragraph on the 1073. ADA information for parolee Olivarez indicated a cane was needed. He verified that this was due to a previously broken foot that has since healed. No accommodations were needed. Parolee Lopez needed help reading documents. The DC ensured counsel had assisted the parolee with the Violation Report prior to the hearing and appointed counsel as an accommodation. Parolee Linscomb is EOP, developmentally disabled and cannot read. The DC and attorney assisted during the hearing and both asked the parolee a lot of questions throughout to ensure that she understood the process and the offer she was accepting. She had some difficulty understanding the difference between probation and parole violations but the DC and counsel explained the two in simple English and asked that she explain back her understanding. She was ultimately able to verbally differentiate the two.

e) Remedial sanctions

Both DCs discussed the appropriateness of remedial sanctions for those who were eligible. Two parolees were offered remedial sanctions: parolee Chinson (D84748) was offered a return to custody (for a dry out) followed by a drug treatment program at the direction of his parole agent, which he accepted. Parolee Pearson (T85087) was offered the ICDTP but declined to take the offer.

8) Revocation Hearing

a) Timeliness

Eight cases reviewed prior to tour proceeded to a revocation hearing and seven of them were timely (88%). *Exhibit 1-A*. The late case (Savage, P05835) was one day late, most likely because the PCH was late as a result of the DC shortage, which has since been remedied. All four of the revocation hearings observed were timely.

RSTS shows that revocation hearings at SRCJ were timely for 97% of cases in May, 95% of cases in June and 94% of cases in July.

CalPAP's statistics from the Dublin office reveal the following timeliness percentages:

Month	Cases Reviewed	Cases in compliance	Percent Timely
March 2009	105	103	98.10%

April 2009	92	90	97.8%
May 2009	108	105	97.2%7*

b) Quality of hearings

Two DCs conducted the four hearings. Both DCs conducted thorough ADA reviews that included a review of DEC and an interactive interview with the parolee. A rights review was also conducted, with special attention paid to the right to a neutral hearing officer, right to a copy of the hearing tape, and a review of how to appeal a decision. A summary of the substantive components of each hearing is as follows:

- Jackson (T83108)- The parolee is CCCMS due to depression but verified he has not taken medication in three or four years. No other disabilities were noted. He was charged with association with prohibited persons (the parolee cannot associate with minors without the consent of his parole agent). The agent of record was at mandatory GPS training so a substitute agent was present, who had talked at length with the agent of record and was well prepared for the hearing. The DC reviewed the special conditions of parole and verified their validity. At the time of arrest parole agents observed the parolee at a bus stop with a group of minor males. The parolee denied that he was spending time with the minors and reported he happened to be a bus stop with them. One of the minors appeared to testify. Because the minor could not enter the secure hearing area the DC, defense counsel and parole agent took his testimony in the lobby. The parolee was not present for the testimony. The minor testified that he hung out with the parolee for most of the afternoon on the day in question and that they were friends. The minor's testimony served as the basis for the good cause finding and the parolee was assessed a 12I return to custody. The parolee was allowed to speak on occasion but there were some instances where the DC told the parolee he could not talk and that he should speak through his attorney. The DC should allow the parolee to speak in his/her own defense and present evidence. The DC verbalized and documented the evidentiary basis for the good cause finding.
- Coors (G12042)- This was a not-in-custody hearing. The parolee was charged with reckless driving. The arresting officer testified that the parolee was seen weaving in and out of traffic at high speeds on a motorcycle and cars had to brake to avoid a collision. In his defense, the parolee stated he had been pulled over nine times recently but never ticketed and that the arresting officer acted aggressively toward him. Defense counsel argued the facts could easily present a scenario of a traffic violation and articulated a belief that the officer over dramatized the events. The DC took the mitigation into consideration, along with the fact that the parolee has been gainfully employed, and gave a disposition of COP. The DC verbalized and documented the evidentiary basis for the good cause finding.
- Rael (P52996)- The parolee is in need of a cane and had one as he was escorted into the hearing room. DEC also showed a history of CCCMS in 2007 but the parolee has

since been declassified. The parolee also reported occasional trouble hearing during the interactive ADA review and the DC told him to let her know if he had any trouble hearing during the proceeding. The charge was absconding and the agent presented substantial evidence to support a good cause finding and the parolee was assessed 9I. The DC discussed remedial sanctions but deemed them inappropriate given the parolees seven prior absconds and no explanation for his unwillingness to abide by his conditions of parole. The DC verbalized and documented the evidentiary basis for the good cause finding.

- Griffin (F49630)- The parolee is CCCMS but stated he no longer takes medication. He also suffers from Attention Deficit Disorder and has seizures. An attorney was appointed as an accommodation. The agent of record was on pre-approved vacation and a prepared substitute agent was present. The parolee was charged with use of cocaine, use of heroin and grand theft auto. The DC established good cause on the drug charges based on a positive lab result. The parolee stated he was taking morphine based cough medicine but he had no prescription for it. The agent also verified that such a medicine would not cause a positive cocaine or heroin test. Regarding the grand theft charge, the state called two officers and the alleged victim but none appeared. The charge was dismissed for lack of evidence. The parolee was assessed credit for time served plus a special condition to attend outpatient drug treatment at the direction of DAPO. The DC verbalized and documented the evidentiary basis for the good cause finding. The DC also discussed remedial sanctions and considered Proposition 36 but the parolee was ineligible due to a prior CYA commitment.

The monitors were impressed with the quality of hearings. The only issue noted was one DC's failure to allow a parolee to speak during one hearing.

c) Qualitative document review

- In one case reviewed prior to tour, the DC did not adequately document the evidentiary basis for their good cause finding. *Exhibits 1-B and 11.*
- In seven cases reviewed prior to tour (88%), the DC did not complete section V of the BPH 1073 in DEC. The DC must complete DEC to document what accommodations were provided during the revocation hearing. BPH DEC policy and procedures require this and DCs have been provided training on this subject. *Exhibits 1-B and 9.*

d) Hearsay evidence and Comito

One Comito objection was made during the hearing for parolee Griffin, whose charges included grand theft auto. The State called two officers and the alleged victim but none appeared. The DC verified that subpoenas were sent. Defense counsel lodged an objection to admission of the statements of the alleged victim. The DC applied the Comito balancing test as required. First she questioned the agent's good faith efforts to secure the victim's presence. The agent had called the victim but her phone was disconnected. He then went to the victim's reported address but the victim's mother stated she had not been there is some

time. The agent left the mother a message regarding the subpoena and hearing date and time. The DC then inquired into the importance of the evidence to the ultimate good cause finding and determined that the alleged victim's statement was critical to a good cause finding as it was the only evidence regarding theft of the vehicle. Despite DAPO's diligent efforts to secure the presence of the witness, the importance of the evidence exceeded the good faith efforts and was given more weight. The *Comito* objection was granted. The charge was dismissed for lack of evidence. The DC did an excellent job in her application of the balancing test and verbally conveyed her thought process and reasoning.

One revocation reviewed prior to the tour included documentation of a *Comito* objection. At the revocation hearing for parolee George (T66809), charged with spousal/child battery and cruelty to a child, a testifying investigator read hearsay statements made by reports prepared by other officers and statements made by witnesses/victims. The investigator did not have first-hand knowledge of the statements. The DC documented the objection, noting due diligence by DAPO to secure the presence of the witnesses, but also noted that the information which may have been heard by the non-appearing witnesses was very important to the ultimate finding of fact and is not corroborated by any other evidence. The parolee's right to confront and cross examine adverse witnesses trumped and the objection was sustained. The DC documented his application of the balancing test and his analysis on the 1103-REV. The charges were dismissed.

9) Remedial Sanctions

a) DAPO

According to RSTS Closed Case Remedial Sanctions Summary - Santa Rita DRU for the months of May and June 2009, the Par Ads recommended a remedial sanction in 17%; and for May 2009, RSTS reported 15% at the Par Ad step. The RSTS Parole Administrator Statistics report offers a more in-depth review and confirms the Par Ads' recommend the various available remedial sanction programs. Furthermore, this report verifies they are using the "difference of opinion" option and recommending remedial sanction programs over the parole agent request for a return to custody. Additionally, for some non-mandatory referrals, the Par Ads reported they contact unit supervisors and agents to discuss and recommend a possible remedial sanction placement that would be more effective from the unit level.

Both Par Ads spoke about the impact the state budget crises is having on local community resources, Basin and Prop 36; however, they have been able to continue to recommend remedial sanctions by identifying alternative programs that meet the necessary requirements and offering a positive outcome for the parolee. The Par Ads from Santa Rita DRU should be commended for going the extra step of using limited available resources that requires creative thinking and working within the *Valdivia* time constraints.

The Unit Supervisors agreed that California's budget crisis has recently affected their ability to place parolees in community based programs in lieu of return to custody. They reported

local programs that contract with the state are reluctant and/or will not accept parolees for fear of not being paid for their services.

b) BPH

According to the RSTS "Closed Case Remedial Sanctions Summary" report, a remedial sanction was given in 3% of cases at the RTCA step, in 12% of cases at the PCH step and in 4% of cases at the revocation hearing step in July.

The RSTS "Closed Case Summary Remedial Sanctions" report for July shows that 62 parolees were given community ICDTP, 24 were given jail based ICDTP, 43 were given Proposition 36, three were sent to a RMSC, three were sent to STAR, one was given EID and four were given another program.

10) Mentally Ill

There is currently only one parolee being processed through the Mentally Ill Suspension process from the Dublin CalPAP office. Proceedings for parolee Sakata (F73623) were suspended on 4/1/09 at the first PCH and two more PCH were subsequently postponed. Attorney checks occurred on 5/4/09, 5/13/09, 5/18/09, 6/5/09, 6/17/09, 6/30/09 and 7/1/09. The parolee also had a competency hearing in criminal court on 7/31/09. On 7/28/09 the attorney reported the parolee could be scheduled for a PCH. At the PCH on 8/4/09 the PCH was postponed because the parolee was unable to participate due to mental illness. RSTS shows that PCHs for this case were scheduled and postponed on the following dates after information was received that the parolee was not ready to proceed: 4/10/09, 4/22/09, 4/27/09, 5/13/09, 8/4/09, and 8/18/09. The process for tracking and suspending cases of this type has been followed in this case. Regular attorney checks have occurred and the BPH continues to attempt to place the parolee back on calendar until notified by defense counsel that the parolee is unable to proceed.